

REMARKS

This responds to the Office Action dated March 24, 2008.

Claims 1, 75 and 78 are amended, and claim 80 is canceled; as a result, claims 1-10, 12-14, 73-79, and 81 are now pending in this application.

In the Specification

The specification has been amended to update the priority information of the related application. No new matter has been added.

§ 103 Rejection of the Claims

Claims 1-10, 12-14 and 73-81 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Dennis et al. (U.S. Patent No. 6,114,164, hereinafter "Dennis") in view of Kofidis et al. (Journal of Thoracic and Cardio. Surg., hereinafter "Kofidis"), Farb et al. (U.S. Patent No. 6,048,722, hereinafter "Farb"), Bursac et al. (Am. J. Physiol. 277, hereinafter "Bursac") and Terracio et al. (In Vitro Cell. And Develop Bio., hereinafter "Terracio").

Claim 1

Applicant respectfully traverses the rejection and submits that the Office Action does not set forth a proper *prima facie* case of obviousness because the cited portions of Dennis, Kofidis, Farb, Bursac, and Terracio, individually or in combination with each other, and reasoning given in the Office Action, do not provide the claimed subject matter. For example, Applicant is unable to find in the cited portions of Dennis, Kofidis, Farb, Bursac, and Terracio, individually or in combination, among other things, a biological treatment administration module coupled to a culturing module and adapted to deliver a biological stimulus that enhances one or more of proliferation, engraftment, survival, and differentiation of the cells after their administration into a body, the biological treatment administration module including one or more biological stimulus agents selected from protein and nucleic acid, as recited in claim 1. Applicant is unable to find in the Office Action a proper reason that remedies this deficiency.

The Office Action states:

With respect to the claim limitation that the biological treatment administration module “including one or more biological agents selected from protein and nucleic acid”, the modules resulting from the combination of the references of Farb et al. with Dennis et al. would result in a structure that is capable of holding a protein or nucleic acid agent that can be communicated with the culturing module. Note positive recitation in the claims that the apparatus includes a protein or nucleic acid agents does not further patentably distinguish the structure of the claim because “Expressions relating the apparatus to contents thereof during an intended operation are of no significance in determining patentability of the apparatus claim.” *Ex parte Thibault*, 164 USPQ 666, 667 (Bd. App. 1969). See MPEP 2115.

Applicant respectfully traverses. Claims 1 recites a biological treatment administration module including one or more biological stimulus agents selected from protein and nucleic acid, as opposed to merely capable of holding the one or more biological stimulus agents. The “one or more biological stimulus agents selected from protein and nucleic acid” are recited as part of the apparatus, as opposed to merely related to the apparatus during its intended operation. Therefore, it is believed that *Ex parte Thibault* does not apply.

Additionally, Applicant is unable to find in the Office Action a reason why one of ordinary skill in the art would have had reasonable expectation of success in the combination of the cited references.

Applicant respectfully requests reconsideration and allowance of claim 1.

Claims 2-10, 12-14 and 73-81

Applicant respectfully traverses the rejection. Claims 2-10, 12-14 and 73-81 are dependent on claim 1, which is believed to be allowable for at least the reasons set forth above. Therefore, the discussion above for claim 1 is incorporated herein to support the patentability of claims 2-10, 12-14 and 73-81.

Applicant respectfully requests reconsideration and allowance of claims 2-10, 12-14 and 73-81.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at (612) 373-6965 to facilitate prosecution of this application.

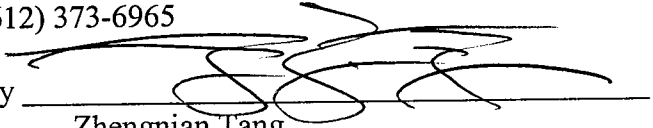
If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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By


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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 24 day of June 2008.

Name

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